

Mackinac Straits Corridor Authority (MSCA)

Public Meeting

February 16, 2022 – 10:00 am

In-Person/Virtual Meeting ([Mackinac Straits Corridor Authority Meeting 02-16-2022 - YouTube](#))

Meeting Minutes - Draft

Members Present: Mike Nystrom, MSCA
Anthony England, MSCA

Members Absent: Paul Novak, MSCA

Also Present: Raymond Howd, Assistant Attorney General to MSCA
Dr. Mike Mooney, Consultant to MSCA
Peter Holran, Enbridge
Dan Cooper, HT Engineering, Consultant to MSCA
Aaron Dennis, Enbridge
Guy Krepps, Enbridge
Amber Pastoor, Enbridge
Monica Monsma, MDOT
James Lake, MDOT
Bill Phillips, MDOT
Randy Debler, MDOT
Ryan Mitchell, MDOT
Tyler Steele, MDOT
Cindy Robinson, MDOT
Carrie Bates, MDOT
Amy Matisoff, MDOT

I. Welcome/Call to Order

Mackinac Straits Corridor Authority (MSCA) Chairman Michael Nystrom opened the meeting at 10:03 p.m. and welcomed attendees, guests, and Authority member Anthony England. It was noted Authority member, Paul Novak, a practicing attorney, was not able to attend due to a conflicting court proceeding. Member Novak had committed to the February 16th rescheduled meeting, but after the date had been set, he was not able to make it. Member Novak relayed to Chairman Nystrom that he did not have any concerns or issues for this meeting and to proceed without him. Chairman Nystrom outlined the meeting agenda and public comment function, stating that individuals must sign-up for public comment, and then those individuals will be announced in order for public comment presentations. A public comment form was made available for use of written comments. All comments will be part of the public record of this meeting.

II. Approval of Agenda

Chairman Nystrom called for a Motion to Approve the Agenda. Motion by Anthony England. Seconded by Mike Nystrom. 2 ayes, 0 nays. Motion carried.

III. Approval of October 13, 2021, Minutes

Chairman Nystrom called for a Motion to Approve the October 13, 2021, Meeting Minutes. It was noted a word was missing in Item C-d, Third-Party Utilities, first paragraph, first sentence. The word “been” was omitted after, “There was...”. The sentence should be “There has been little ...” Motion by Anthony England to accept the minutes with the above correction. Seconded by Mike Nystrom. 2 ayes, 0 nays. Motion carried.

IV. Old Business

1. Memorandum of Understanding Between MSCA and Enbridge for Independent Quality Assurance

Ryan Mitchell, MDOT, stated the Memorandum of Understanding (MOU) between the Mackinac Straits Corridor Authority (MSCA) and Enbridge regarding the Independent Quality Assurance (IQA) provides clarity between the parties to the tunnel agreement (MSCA and Enbridge) and to those entities that are not part of the tunnel agreement, the contractor, and the independent quality assurance contractors, as to their interactions for the benefit of the project. Enbridge will hire a contractor to build a tunnel, ancillary assets and works. The Corridor Authority will hire an Independent Quality Assurance Contractor (IQA), to perform standard of practice quality assurance inspection during the construction of the project. The IQA Contractors will report to the Authority, but their work will be paid for by Enbridge through an escrow account, in accordance with the tunnel agreement. The MOU ensures that Enbridge will provide the necessary and expected access to records and sites needed for the State to collect timely QC and QA information so that the IQA’s work will result in complete construction quality documentation. The Tunnel Agreement was vague on the level of access. The purpose of the MOU is to clarify this important topic so there is no misunderstanding or disruption resulting from access, or lack thereof, at the construction sites and to project quality management data.

Chairman Nystrom called for a Motion to Approve the Memorandum of Understanding to continue to move forward. Motion by Anthony England to accept the Memorandum of Understanding. Seconded by Mike Nystrom. 2 ayes, 0 nays. Motion carried.

2. Tunnel Agreement Section 7.5 Requirements

At the October meeting there was discussion about review of the RFP and the context of that review, and the comments made by staff. The excerpt of the tunnel agreement included for members for discussion today, Section 7.5, defines the criteria for concurrence to be granted by the MSCA. In response to Member Novak’s request for the comments made, a chart that shows what changes were made to the RFP in accordance with Section 7.5 of the Tunnel Agreement was assembled and provided to Members. Chairman Nystrom welcomed input from Dr. Mike Mooney, and Dan Cooper, HT Engineering, consultants to MSCA, who are experts in geotechnical and tunnel engineering and pipeline safety engineering, respectively. It was inquired if anything has changed in the RFP with regard to the requirements in

Section 7.5 under the tunnel agreement. Dr. Mooney confirmed that nothing had changed, and that the RFP meets the requirements set forth in Section 7.5.

3. Request for Proposal (RFP) Comment and Resolution Log
At the October meeting, Member Novak suggested that a comment log be compiled for public consumption that is available to Authority members and the public. The log of comments on the RFP pertaining to tunnel agreement Section 7.5 issues, versions of RFP language pertaining to such Section 7.5 comments, and resolution of comments including revised RFP language has been provided and posted on the MSCA website.
4. Tribal Comments on RFP
Raymond Howd, Special Assistant Attorney General gave an update on comments received from Tribal representatives to the Authority. All 12 federally recognized Tribes in Michigan were invited to participate in consultation. Comments were received from Bay Mills Indian Community and the Pokagon Band of Potawatomi Indians. Comments regarding the draft RFP and the draft proposed consultation policy were addressed recently in letters sent to President Whitney Gravelle of Bay Mills Indian Community, and to Matthew Bussler, Tribal Historic Preservation Officer, Pokagon Band of Potawatomi Indians, included in the agenda packet.
5. RFP for Construction of the Tunnel
Chairman Nystrom called for a Motion to concur with the RFP for Construction of the Tunnel. Motion by Anthony England to accept the RFP for Construction of the Tunnel. Seconded by Mike Nystrom. 2 ayes, 0 nays. Motion carried.

V. New Business

1. Proposed MSCA Tribal Consultation Policy – Raymond O. Howd, Special Assistant Attorney General; Amy Matisoff, MSCA Tribal Affairs Coordinator
Amy Matisoff noted she had reached out to all 12 federally recognized Tribes in Michigan for comment on the proposed Tribal Consultation Policy. Responses were received from Bay Mills Indian Community and Pokagon Band of Potawatomi Indians, which were included in the agenda packet. In reference to those comments several updates were made to the policy. Amy and Authority members noted they are appreciative of the feedback from Tribes and feel it has made the partnership more robust and transparent.

Chairman Nystrom called for a Motion to approve and adopt the Proposed MSCA Tribal Consultation Policy. Motion by Anthony England to approve and adopt the Proposed MSCA Tribal Consultation Policy. Seconded by Mike Nystrom. 2 ayes, 0 nays. Motion carried.

2. USACE Permit Application
Ryan Mitchell, MDOT, noted the Army Corps of Engineers has determined an Environmental Impact Statement (EIS) is needed for the project. In December 2021, Enbridge provided the EIS RFP proposals, its recommendation, and summary of the Enbridge RFP Process to the Corps. The Corps is allowing interested Tribes to

review the proposals and to provide comment. The Corps will inform Enbridge as to next steps. Once the EIS contractor is selected and the EIS process is noticed by the Corps, then the Corps has up to two years under statute to complete the EIS. Given the work the Corps has done since the application was submitted in April 2020, it is conceivable that the EIS process could be performed faster than what is allowed for under statute. Current status is for Enbridge to wait to be informed by the Army Corps as to next steps. The Authority has no involvement directly in this process other than to receive updates, although the Authority could be an applicant on the permit and could be engaged by the Corps as an agency with an interest in the project. Other agencies may also be engaged by the Corps. The goal for the Army Corps of Engineers is to do a thorough and comprehensive EIS within the statutory timeframe. Construction on the tunnel cannot commence until all permits have been approved and issued. Per the tunnel agreement Enbridge is required to initiate construction no later than 180 days following the issuance of a permit. Amber Pastoor of Enbridge noted they will be issuing the RFP, conducting the solicitation process, and evaluating proposals in parallel with the Army Corps of Engineers EIS process.

3. Status of MPSC Contested Case Proceedings

Raymond Howd, Assistant Attorney General, stated that testimony occurred in the MPSC Proceedings on January 13, 14, 18, 21, 24, and 25. The parties, including numerous intervenors, submitted their written testimony in September 2021. The MPSC hearings involved cross examination on some of that testimony, but not all. In the proceedings as intervenor, the Authority submitted testimony from Dr. Mike Mooney, tunnel expert, and Daniel Cooper, pipeline expert. Their testimony was based on their review of the design process and all the documents that were available. Based on that review, they concluded that the elements necessary for Enbridge to receive the permits from the Michigan Public Service Commission had been met. The initial briefs were due Friday, February 18, 2022 and on behalf of the Authority, Raymond Howd will be filing a brief which summarizes Dr. Mooney's and Mr. Cooper's testimony and explains the role of the Authority in the process. Reply briefs are due March 11, 2022 which the Authority may not need to file. Then the Commission will make a determination. The Authority has to rely on the US Army Corps of Engineers, Michigan Department of Environment, Great Lakes, and Energy (EGLE), and the Michigan Public Service Commission (PSC) permit process to address the types of concerns conveyed from intervenor groups and the public regarding regulatory questions. The Authority is not a regulatory agency. If the public has concerns about this process, they are encouraged to contact one of those three agencies.

4. Third-Party Utilities

Raymond Howd noted there is a draft agreement in discussion between Peninsula Fiber Network (PFN) and the Authority with Enbridge as a Third-Party beneficiary. PFN has made some comments and provided a revised draft. Raymond Howd will be meeting with PFN to finalize the document and anticipates the document will be ready for Authority review by the next MSCA meeting. Member Anthony England inquired if an electrical utilities company has contacted the Authority or Enbridge. Ryan Mitchell noted that if either party is approached by an electrical utility company

they are required to inform the other party. To date, neither party has been informed of an interest in the tunnel from an electrical utility company. The purpose of the tunnel is to include several utilities and it is anticipated that others will be interested in this.

5. Extension of Ray Howd SAAG Contract

Ryan Mitchell noted Raymond Howd's, Special Assistant Attorney General (SAAG), contract was executed on April 1, 2021 and expired December 31, 2021. An amendment to the contract was presented to extend Raymond Howd's contract through December 31, 2022. The value of the original contract was \$50,000. To date \$25,000 has been expended, leaving a balance of \$25,000. The amendment adds an additional \$25,000 bringing the remaining balance to \$50,000. The amendment also provides for reimbursement of travel expenditures. Chairman Nystrom inquired where the funds were allocated from. Any funds related to the tunnel project, by law must come from the Straits Protection Fund. Transactions are approved by the Attorney General's office, while MDOT is custodian of the funds.

Chairman Nystrom called for a Motion to approve Raymond Howd's new contract. Motion by Anthony England to approve Raymond Howd, SAAG's contract. Seconded by Mike Nystrom. 2 ayes, 0 nays. Motion carried.

6. Extension of Mike Mooney Contract

Ryan Mitchell noted Mike Mooney's contract was issued on December 28, 2018 and expired December 27, 2021. A contract amendment was presented to extend the Mike Mooney Consulting, LLC contract through December 27, 2023 – an additional 2 years, retroactive to December 28, 2021. There is no increase in cost; however there is an allowance for escalation of the rate by 2 percent. The value of the contract was \$495,305. To date \$303,325 has been expended, leaving a balance of \$191,980.

Chairman Nystrom called for a Motion to approve Mike Mooney's new contract. Motion by Anthony England to approve Mike Mooney Consulting, LLC contract. Seconded by Mike Nystrom. 2 ayes, 0 nays. Motion carried.

7. Extension of HT Engineering Contract

Ryan Mitchell noted HT Engineering's contract for the expert pipeline safety services of Dan Cooper, was issued on December 28, 2018 and expired December 27, 2021. A contract amendment was presented to extend HT Engineering's contract through December 27, 2023 – an additional 2 years, retroactive to December 28, 2021. There is no increase in cost; however there is an allowance for escalation of the rate by 2 percent. The value of the contract was \$309,453. To date \$29,333 has been expended, leaving a balance of \$280,120.

Chairman Nystrom called for a Motion to approve HT Engineering's new contract. Motion by Anthony England to approve HT Engineering's contract. Seconded by Mike Nystrom. 2 ayes, 0 nays. Motion carried.

VI. Public Comment

1. The public is encouraged to address Authority members at this time. Each member of the public is limited to three (3) minutes. Written public comment to the MSCA may be submitted via the [MSCA Public Comment Form](#).

Monica Monsma, MDOT, coordinated the public comments that were heard. Public comments are not question and answer periods for Authority members and there will not be a response provided from Authority members; however public comments will be taken under advisement for consideration. Thirteen individuals signed up to give public comment; however only twelve presented. A full list is attached to these minutes, in order of presentations. One hundred-forty-six individuals submitted written comments, which are also attached.

VII. Adjourn

With no further business at hand, Chairman Nystrom called for Motion to Adjourn. Motion by Anthony England. Seconded by Member Nystrom. Motion Carried.

Meeting adjourned at 11:45 p.m.

Minutes taken by:
Cindy Robinson
Senior Executive Management Assistant
MDOT Bureau of Development

Approved: _____